86-1334

No. .....

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1986

JOHN M. SKEVIN,
Petitioner,

v.

SUPREME COURT OF NEW JERSEY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTIONS PRESENTED

1. Whether a state Supreme Court, consistently with Due Process, may *automatically* disbar an attorney without regard for or inquiry into his current character and fitness to practice law where said attorney is found to have knowingly misappropriated client funds under a greatly reduced standard of knowledge?

2. Whether a State Supreme Court, consistently with Due Process, may *conclusively* presume that an attorney is guilty of *knowing* misappropriation of client funds on the basis of a record showing no intent to defraud or steal but simply revealing shortages in the attorney's trust account at certain moments in time?

3. Whether a State Supreme Court, consistently with Due Process, may disbar an attorney where, prior to that Court's order, its agents cause or permit extensive breaches of confidentiality in the disciplinary process thereby triggering pervasive, statewide adverse publicity and where the Court concedes that in sentencing attorneys convicted of disciplinary violations the Court deems determinative its institutional need to maintain a good public image?

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OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported at *Matter of Skevin,* 104 N.J. 476 (1986). [The Opinion appears as *Appendix A.*]

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JURISDICTION

The judgment of the New Jersey Supreme Court disbarring the petitioner, John M. Skevin, was entered on November 14, 1986. [The Order of disbarment appears as *Appendix B.*] This petition for certiorari has been filed in this Court within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section One of the Fourteenth Amendment, United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.J. Ct. R. 1:21-6 provides in pertinent part:

> Every attorney who practices in this state shall maintain in a financial institution in New Jersey * * *:
>
> (1) a trustee account or accounts, separate from any business and personal accounts, and from any fiduciary accounts * * *, into which trustee account or account funds entrusted to the attorney's care shall be deposited; and

(2) a business account into which all funds received for professional services shall be deposited.

Other than fiduciary accounts * * *, all trustee accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account."

[The full text of *N.J. Ct. R. 1:21-6* appears as *Appendix C*]

Disciplinary Rule ("DR") 9-102(A) provides:

All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, and all escrow funds, shall be deposited in one or more identifiable bank accounts maintained in this State, and no funds belonging to the lawyer or law firm shall be be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client, a portion of which the lawyer or law firm will be entitled to receive for his own use must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

N.J. Ct. R. 1:20-10(a). Confidentiality provides as follows:

(a) All proceedings conducted and records made pursuant to R. 1:20 shall be confidential and shall not be disclosed to or attended by anyone except as authorized by these rules or as provided by the Supreme Court and as follows:

(1) on the scheduling of oral argument for final discipline by the Supreme Court, in which event the recommendation of the Board that is the

subject thereof, together with any briefs filed pursuant to an order of the Court shall be made public; or

(2) at the request of or with the consent of the respondent and upon the ultimate determination of any disciplinary proceeding; or

(3) on the entry of final orders of the Supreme Court in respect of disciplinary matters; or

(4) upon the order of the Supreme Court.

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STATEMENT OF THE CASE

This case arises from the disbarment of petitioner, John M. Skevin, by the New Jersey Supreme Court. On December 23, 1986, the United States Supreme Court per Justice William Brennan, Jr. issued a stay of the lower court's disbarment order, following submission of briefs by petitioner and the respondent. Justice Brennan's stay is in effect pending adjudication of this petition for certiorari. Justice Brennan's Orders appear herein as *Appendix D.*

1. The Nature of the Ethics Charges Against John Skevin.

On March 29, 1983, the Bergen County District Ethics Committee[1] [hereinafter the "Committee"], served a com-

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[1]In *Middlesex County Ethics Committee v. Garden State Bar Association,* 457 U.S. 423 (1982), this Court had occasion to describe New Jersey's attorney ethics system. In that opinion, the Court accurately observed that the system is three-tiered:

(Continued on following page)

plaint upon John Skevin, the petitioner, initiating ethics proceedings against him. That complaint was instigated by Mr. Skevin's former client, Marie L. Dodd.

Soon after filing the *Dodd* complaint, the committee filed an amended complaint charging, *inter alia*, various ethics violations at the instigation of several other former clients.

On November 14, 1986, the New Jersey Supreme Court dismissed all of the charges brought against Mr. Skevin by his clients or declared them to be so *de minimus* as to require only a private reprimand.[2]

In the course of investigating these minor client matters, the New Jersey Office of Attorney Ethics [hereinafter the "OAE"] decided to audit John Skevin's law firm financial records. That audit revealed, and indeed petitioner has candidly admitted throughout the proceedings below, that from 1981 through 1983, Mr. Skevin de-

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(Continued from previous page)

The lowest level is the District Ethics Committee, a countywide body that initiates investigations on behalf of the Supreme Court of New Jersey. The intermediate level is the Disciplinary Review Board, a statewide body that adopts, modifies or rejects the Committee's findings and makes a recommendation for discipline to the Supreme Court of New Jersey. The upper level is the state Supreme Court itself, the body that, relying upon the factual findings of the lower bodies, see *id.*, 457 U.S. at 434 n. 13, issues a judgment imposing discipline.

[2]The *Dodd* matter did "not . . . warrant . . . disciplinary action." *In the Matter of Skevin*, (Supreme Court of New Jersey, D-2-86, decided, November 14, 1986, submitted herewith as Appendix A) at 3; the *Schrader* matter amounted to "conduct for which a private reprimand would constitute adequate discipline," *id.* at 5; the *Onello* matter was outright dismissed, *id.* at 6; and the *Santana* matter was deemed to warrant a private reprimand, *id.* at 7.

posited in the trust account he maintained for his clients large sums of his own money earned in various real estate transactions he handled *pro se*. Although none of Mr. Skevin's clients claimed that he had deprived them of trust funds held in escrow—indeed it is undisputed that all of Mr. Skevin's clients received their due from the trust account—the OAE audit revealed that at certain points in time during the years 1982 and 1983, the balance in the trust fund was less than the amount of trust monies Mr. Skevin was responsible for as reflected in his trust account ledger sheets.

On the basis of the OAE audit, the Committee itself charged Mr. Skevin with various offenses including the knowing misappropriation of client trust funds.

2. The Decision of the Supreme Court of New Jersey not to temporarily suspend Mr. Skevin and his good standing as an attorney during the two years this ethics matter was processed.

In March of 1984, the OAE moved before the Supreme Court of New Jersey, for an order temporarily suspending Mr. Skevin pending proceedings against him. The Supreme Court denied that motion on July 12, 1984. The Court permitted Mr. Skevin to continue to practice law under the supervision of another New Jersey attorney, Raymond L. Flood.

No ethics complaints were filed against Mr. Skevin arising out of matters during the years 1984, 1985 and 1986. Indeed, in connection with proceedings before the Supreme Court of New Jersey against Mr. Skevin, his court-appointed proctor filed an affidavit declaring, *inter alia*, that "In the course of the past year that I have served as Mr. Skevin's proctor, I have observed him profession-

ally and personally. Mr. Skevin appears to be a competent professional, providing good quality services to his clients. Mr. Skevin's legal files appear to be well organized and he obtains good results for his clients which primarily involve negligence actions." *That affidavit was uncontroverted* and appears herein as *Appendix E.*

3. Prejudicial publicity against Mr. Skevin during the pendency of this ethics matter and violations of confidentiality rules by the New Jersey ethics system.

As noted above, the initial ethics complaint in this matter was served on March 29, 1983, and the matter was tried before a special master, retired Judge Ward J. Herbert, on July 10, 12, 15 and 16, 1985. The special master's report was submitted under date of March 12, 1986.

Under New Jersey Court Rules, ethics proceedings are to be kept strictly confidential. That rule was grossly breached in these proceedings.

On June 8, 1984, an article appeared in *The Star-Ledger,* a statewide New Jersey daily, titled "SUSPENSION OF ATTORNEY ASKED PENDING ETHICS HEARINGS" and sub-titled "EX-LEGISLATOR ACCUSED OF MISUSING CLIENT TRUST FUNDS." [Newspaper articles cited herein appear as *Appendix F.*] That article, although not in violation of confidentiality rules, because it was based upon a public hearing before the Supreme Court on the issue of temporary suspension, was nevertheless the first of a series of highly prejudicial press stories.

On August 26, 1984, an article appeared in the *New York Times* titled "EX-STATE SENATOR FACES

ETHICS INQUIRY." The article cites statements by Thomas McCormick, Chief Hearing Officer of the OAE and David Johnson, OAE Director, that "Mr. Skevin is charged with misappropriating $150,000.00 in client funds." The article referred at length to details of the *Schrader* case and documentary evidence involved in that matter.

On August 13, 1985, shortly after hearings before the special master, but prior to the issuance of his decision, *The Bergen Record* featured an article entitled "ETHICS UNIT MAY SEEK DISBARMENT OF SKEVIN." The article quoted OAE staff: "The State office of Attorney Ethics may seek to have Hackensack attorney John M. Skevin disbarred, said an official who recently prosecuted Skevin for misconduct. 'I want this guy to get what he deserves, at least in my opinion,' said [Thomas J.] McCormick who presented the case against Skevin at the hearing . . . 'We believe Skevin was using the trust account as his personal bank,' said McCormick . . ."

On September 3, 1985, special master Ward Herbert issued a letter to the OAE and Mr. Skevin's counsel saying, "I hardly need to tell you that *I was shocked by the newspaper article of August 13th* [*1985*]. It is the sort of thing that eliminates much, if not all, of the meaning out of Rule 1:20-5(d)." On May 6, 1986, shortly after the special master issued his findings and conclusions, Herb Jaffe, a leading columnist for *The Star-Ledger* published a column complaining about the delays in the ethics system and calling for Skevin's disbarment. *Mr. Jaffe quoted extensively from the confidential report of the special master*, which obviously had been leaked to him

from within the ethics system. Mr. Jaffe concluded his article by complaining about the delay in disbarring Mr. Skevin and noting sarcastically "And they say the lawyer ethics system instills the public with confidence."

On May 6, 1986, Special Master Herbert wrote to the Director of the OAE complaining about the leak of his confidential report to *The Star-Ledger* and noting that he had forwarded copies of the report only to ethics system personnel and Mr. Skevin's counsel.

On May 31, 1986, *The Star-Ledger* headlined "DISBARMENT ASKED FOR FORMER LEGISLATOR," and quoted extensively from the report of the Disciplinary Review Board [hereinafter "DRB"], the intermediate disciplinary body that received Judge Herbert's report and in turn made recommendations to the Supreme Court of New Jersey in its own confidential report.

On June 1, 1986, *The Record* headlined "SKEVIN: FROM CLOUT TO LIKELY DISBARMENT," and likewise quoted extensively from the DRB report.

On June 22, 1986, *The Star-Ledger* ran another Herb Jaffe article on the front page of its Opinion/Business section entitled "NO EXCUSES FOR LAWYERS WHO VIOLATE CLIENT TRUST." The article praised recent disbarments and referred to the Supreme Court's scheduled argument on the *Skevin* matter. Again, the newspaper quoted at length from the DRB Report.

4. Proceedings against Mr. Skevin by the Committee, the DRB and the Supreme Court of New Jersey.

During the hearing before Judge Herbert, Mr. Skevin admitted that he had permitted some of the earnings from

his *pro se* real estate transactions to pass through and mix with his trust account funds. He conceded that from time to time he advanced to himself and his clients payments due himself and his clients prior to actual receipt of settlement proceeds. Mr. Skevin testified that he believed that such advances were being funded by the large personal deposits he had placed in his trust account. He did not believe that such advances invaded the trust monies held on account of other clients.

Judge Herbert struggled with the question of whether or not Mr. Skevin had *knowingly* invaded client trust funds and concluded that there were at least two occasions on which the trust account balance was sufficiently low to have alerted Mr. Skevin to the fact that he had exhausted his personal funds and that therefore client trust funds were at risk. On that basis, Judge Herbert concluded that Mr. Skevin had knowingly misappropriated client trust funds.

In his Report and Presentment to the Disciplinary Review Board, [hereinafter the "DRB"], Judge Herbert did *not* recommend disbarment. He ruled only that he found Mr. Skevin guilty of unethical conduct "for which a private reprimand does not constitute adequate discipline."

The DRB, a body consisting of laypersons and attorneys, substantially adopted Judge Herbert's factual findings. They recognized that the "crucial issue [in the case] is respondent's mental state at the time of the misappropriation." They disregarded Mr. Skevin's substantial claims that the invasion of trust funds was an unintentional product of poor accounting and further disregarded Mr. Skevin's claim that his financial neglect was

the result of severe medical crises suffered by him and his immediate family during the time period in question.

The DRB did not even consider the question of whether the petitioner was, at the time of the DRB decision, May 23, 1986, morally and professionally fit to practice law in the State of New Jersey. They concluded that because Mr. Skevin had, in their view, knowingly misappropriated client trust funds in 1982 and 1983, therefore, disbarment was automatically required.

In reviewing the DRB decision, the Supreme Court of New Jersey relied upon and adopted the factual findings of Judge Herbert and the DRB. [See *Appendix A*]

In its opinion, the New Jersey Supreme Court, *for the first time* adopted a definition of "knowledge" from the New Jersey criminal code, N.J.S.A. 2C:2-2b(2), where true knowledge is not required but rather, "a party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist." Applying that newly reduced standard to petitioner, the Court concluded that Mr. Skevin's advances to himself and his client "posed an at least realistic likelihood of invading the accounts of another client . . ." and found, therefore that Mr. Skevin had knowingly misappropriated client funds. [App. 12]

The Court conceded that Mr. Skevin had credibly demonstrated "extraordinary [personal] suffering" during the period in which the trust accounting problems arose. The Court noted, however, that in cases of knowing misappropriation, it has an "inflexible" rule mandating disbarment. [App. 15]

In ruling, the New Jersey Supreme Court indicated that it was "deeply troubled" by the "apparently deliberate breach of the confidentiality of the disciplinary proceedings." The Court noted that "if only private parties were involved, dismissal might be appropriate; but the fact that there was a public interest involved tipped the balance so as to preclude dismissal." [App. 13-14]

The Court made no determinations whatsoever about Mr. Skevin's present moral or professional fitness to practice law. Although the issue of violations of federal due process was briefed by petitioner's counsel below, in its opinion, the Court ignored all such issues and implicity overruled them. [See generally *Appendix A*]

REASONS FOR GRANTING THE WRIT

I. This case squarely presents the grave constitutional infirmities of In Re Wilson, 81 N.J. 451 (1979), a case being explicitly adopted by high state courts throughout the nation.

This case presents this Court with an opportunity to stem a nationwide multiplication of constitutional error that is following in the wake of *In Re Wilson*, 81 N.J. 451 (1979). That case compelled the automatic disbarment of the petitioner despite his uncontroverted current moral and professional fitness to practice law. It compelled also the conclusive presumption that simply because petitioner's trust account showed deficient funds at certain points in time, and because petitioner inferentially was aware of one such moment of deficiency, therefore, petitioner *knowingly* misappropriated, i.e. stole, trust funds.

In re Wilson, supra, holds that where an attorney "knowingly use[s] his clients' money as if it were his own . . . disbarment is the only appropriate discipline." *Id.*, 81 N.J. at 453.

John M. Skevin, the petitioner, was *automatically* disbarred under the *Wilson* rule, following determination that he had knowingly misappropriated client funds. By automatically stripping Mr. Skevin of property protected by the Fourteenth Amendment, i.e. his license to practice law, see *Barry v. Barchi,* 443 U.S. 55, 69-70 (1979) (Brennan, J. concurring), the New Jersey Supreme Court ran afoul of long-standing precedent in this Court.

In *Schware v. Board of Bar Examiners of New Mexico,* 353 U.S. 232 (1957), this Court held that a person may not be excluded from bar admission unless he lacks good character, or is professionally unfit. Ignoring such traits in evaluating qualifications for bar membership, the Court held, amounts to a violation of the Due Process Clause of the Fourteenth Amendment. There, this Court, having granted certiorari to review a state judgment excluding a person from bar membership, found no evidence of "moral turpitude", *id.* at 242, and found that "[i]n the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies . . . cannot be said to raise substantial doubts about his present and good moral character," *id.* at 246. Finding "no evidence in the record which rationally justifies a finding that [petitioner] was morally unfit to practice law," *id.* at 246-47, this Court reversed and remanded the matter.

Under *Wilson, supra,* the constitutionally compelled inquiry of *Schware* into an accused's character and fitness is

held to be irrelevant. In *Matter of Noonan,* 102 N.J. 157 (1986), a case decided just months prior to the New Jersey Court's ruling against the petitioner, the Court interpreted *In re Wilson, supra,* to mean that *any* invasion of trust funds for virtually *any* reason will mean automatic disbarment. It "is not so" the Court ruled "that some kind of intent to defraud . . . is required . . . *The presence of 'good character and fitness,' the absence of 'dishonesty, venality, or immorality'—all are irrelevant,*" the Court declared, *id.* at 160. (Emphasis supplied)

In other contexts, this Court has always held against judicially ordered forfeiture of property or liberty unless a court first finds some degree of fault or venality by the person to be punished.

For example, in *Bell v. Burson,* 402 U.S. 535 (1971), Justice Brennan, writing for a unanimous Court including four justices now sitting, reviewed, on certiorari, a Georgia motor vehicle procedure whereby uninsured motorists suffered temporary suspension of their licenses if they were involved in an accident, unless they posted a bond equal to the amount of damages claimed by aggrieved parties in accident reports. Just as the Supreme Court of New Jersey has declared fault to be irrelevant or presumed, once an invasion of trust funds is established, so the Georgia system held that " 'fault' or 'innocence' are completely irrelevant factors", *id.* at 537, in decisions to suspend licenses. Citing the bar admission case, *Willner v. Committee on Character,* 373 U.S. 96 (1963), Justice Brennan wrote that "we look to substance, not to bare form, to determine whether constitutional minimums have been honored," *id.* at 541, and found the Georgia system to have violated the Due Process Clause of the Fourteenth Amend-

ment because it granted no real hearing on the issue of the motorist's fault.

In effect, by automatically disbarring an attorney upon his or her conviction for knowing misappropriation, the New Jersey Supreme Court conclusively, i.e. irrebuttably, presumes moral and professional unfitness to practice law on that basis of that conviction alone. Moreover, the New Jersey Court, under *In re Wilson, supra,* conclusively presumes that if an audit reveals that an attorney is "out of trust" at some point in time, then the attorney has "knowingly" misappropriated, i.e. stolen, client funds. In *In re Harrison,* 461 A.2d 1034 (D.C. App. 1983) the District of Columbia Court of Appeals, adopting *In re Wilson's* conclusive presumption of corrupt "knowledge" (although declining *Wilson's* automatic disbarment) wrote that New Jersey's

> "definition [of knowing misappropriation] makes clear that improper intent is not an element to be considered in determining whether there has been a misappropriation. This is consistent with the language of DR9-102 which, unlike other discipinary rules, does not require scienter; rather it is essentially a per se offense. Consequently, once the running balance of [the attorney's] office account fell below the amount held in trust for [the client], misappropriation had occurred."

In re Harrison, supra, 461 A.2d at 1036.

Here, too, because petitioner's trust account fell "out of trust" he was conclusively presumed to have misappropriated clients' funds. Such conclusive presumptions of both unfitness to practice law and "knowledge" have always been condemned by this Court as violative of Due Process.

In *Morissette v. United States*, 342 U.S. 246 (1952) this Court condemned precisely the kind of reasoning that has emerged from *In re Wilson, supra.* There, the Court forbade the presumption of criminal intent from the mere fact that a person was found in possession of government property. Here, too, the mere fact that trust funds were, at points in time, unaccounted for cannot give rise to a presumption of corrupt "knowledge." Nor can a conviction of knowing misappropriation, itself moored upon a fatally flawed determination of knowledge, give rise to a presumption that one is unfit to practice law.

In *Sandstrom v. Montana*, 442 U.S. 510 (1979), this Court, following *Morissette, supra*, prohibited the conclusive presumption of "knowing" or "deliberate" homicide from the simple fact that a person killed another. The Court ruled such a presumption constitutionally defective just as it ruled analogous presumptions constitutionally defective in *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978) and *Mullaney v. Wilbur*, 421 U.S. 684 (1975).

Under all the foregoing cases, the New Jersey Court's presumption that petitioner acted with corrupt knowledge and its presumption that he is unfit to practice law were no substitute for a constitutionally mandated evaluation of his current character and fitness, *Schware, supra*, and his actual state of mind at the time he was out of trust, *Morissette, supra.*[3]

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[3]cf. *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1866) condemning the automatic defrocking of a priest for aiding the confederacy and *Ex Parte Garland*, 71 U.S. (4 Wall.) 333 (1866) condemning the *ex post facto* disbarment of attorneys who had supported the confederacy.

Unfortunately, the automatic approach of *In Re Wilson* is spreading throughout the nation. We have already noted the partial adoption of that case in the District of Columbia. Also, the Court should take note of *Matter of Marks*, 72 A.D.2d 399, 424 N.Y.S.2d 229 (1980) citing *Wilson* at 424 N.Y.S.2d at 230; *State, ex rel., Oklahoma Bar Association v. Raskin*, 642 P.2d 262 (Okla. 1982) citing *Wilson* at 267-68; *Matter of Discipline of Okerman*, 310 N.W.2d 568 (Minn. 1981) citing *Wilson* at 571. *Wilson* has been cited in unpublished decisions in Maine, Texas and the District of Columbia; See, Johnson, *Lawyer, Thou Shall Not Steal*, 36 Rutgers L. Rev. 454 (1984) at 486.

This Court has not hesitated to grant certiorari to correct substantial constitutional errors in the context of attorney admission and discipline. See *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957) (reversing state denial of bar admission where the lower court failed to prove that petitioner was "morally unfit to practice law," *id.* at 273); See, also, *Willner v. Committee on Character*, 373 U.S. 96 (1963) (on certiorari to the New York Court of Appeals reversing state denial of bar admission where petitioner was deprived of fair opportunity to prove his character and fitness); *Spevack v. Klein*, 385 U.S. 511 (1967) (on certiorari to the New York Court of Appeals reversing disbarment of attorney because he had asserted the Fifth Amendment); *In re Ruffalo*, 390 U.S. 544 (1968).

Certiorari should be granted in order to stem a nationwide violation of attorney Due Process rights. This case is an excellent vehicle for righting the errors below because here, it is uncontroverted that petitioner's character and fitness at the time of his disbarment was good. See the Affidavit of Raymond Flood, Esq., petitioner's Court-

appointed proctor, *Appendix E.* Thus the constitutional deficiencies associated with automatic disbarment are sharply presented.

II. This case presents a substantial, novel, and undecided issue of federal constitutional law that must be decided in order to preserve the integrity of state bar disciplinary proceedings.

Another reason for granting certiorari in this matter is because a novel and substantial issue of procedural due process has been implicated by the proceedings below. This Court has already ruled that where a criminal jury trial is infected with excessive pre-trial and trial publicity, due process requires vacation of the conviction and retrial. *Sheppard v. Maxwell,* 384 U.S. 333 (1966). This Court has recognized also that judges as well as jurors may be influenced and pressured by excessive press coverage of court proceedings. In *Pennekamp v. Florida,* 328 U.S. 331 (1946) Justice Frankfurter (concurring) wrote that "To deny that bludgeoning or poisonous comment has power to influence, or at least to disturb, the task of judging is to play make-believe and to assume that men in gowns are angels. . . . 'Trial by newspaper,' like all catchphrases, may be loosely used but it summarizes an evil influence upon the administration of criminal justice in this country." *Id.* at 359.

This case poses the unanswered question of whether "trial by newspaper" violates the integrity of state bar disciplinary proceedings in a manner contravening the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Here, the Supreme Court of New Jersey conceded that it was "deeply troubled" by the "ap-

parently deliberate breach of the confidentiality" of the proceedings against Mr. Skevin. In *Wilson, supra,* the Court frankly admitted that it sought harsh penalties for misappropriation in order to preserve its public image and to maintain "public confidence." *id.* at 81 N.J. 456.[4] Given the press clamor for Skevin's disbarment, the Court had no choice but to disbar him. In *Matter of Dondi,* 63 N.Y.2d 331, 472 N.E.2d 281, 482 N.Y.S.2d 431 (1984), New York's highest Court found a confidentiality breach in roughly analogous circumstances to violate federal due process. This Court should find likewise. See also, *Florida Bar v. Rubin,* 362 So.2d 12 (Fla. 1978).

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[4]It is indeed apparent that the New Jersey Supreme Court *must* have been influenced by the confidentiality breaches and resultant publicity in this case. Just seven months prior to the disbarment of petitioner, an attorney was found guilty of the following ethics violations: improper use of a trust account by maintaining a miscellaneous account and a tax reserve account as part of his clients' trust account; misuse of funds in this trust account in five specific cases; two counts of failing to maintain his financial books and records as required by Court Rules; ten counts of engaging in conduct that adversely reflected on his fitness to practice law; and ten counts of not properly preserving the identity of funds of a client. To say the least, the gross neglect of the attorney at issue prejudiced his clients. Some examples of his negligent representation include: failing to perfect a criminal appeal; failing to file suit and thereby exceeding the statute of limitations; and failing to properly administer two estates.

In the face of such overwhelming evidence of misconduct that severely prejudiced his clients, and such abundant evidence of unfitness to practice law, the New Jersey Supreme Court found that a *temporary suspension for less than five (5) years* was sufficient discipline. *Matter of Noonan,* 102 N.J. 157 (1986). Only the Court's sensitivity to press coverage of the *Skevin* matter can explain why he received disbarment while Mr. Noonan received only suspension.

III. The foregoing issues of Due Process were presented to the Court below.

Prior to issuance of the New Jersey Supreme Court decision in this matter, petitioner's counsel showed a prescient concern with the Due Process implications of *In re Wilson.* Citing two Due Process cases, *In re Arndt,* 67 N.J. 432 (1975), a case that adopts *Bell v. Burson,* 402 U.S. 535 (1971), and *Erdman v. Stevens,* 458 F.2d 1205 (2d Cir. 1972) *cert. den.* 409 U.S. 889, petitioner's counsel analogized disbarment to imposition of a criminal penalty and argued that such a penalty could be justified only by a finding of professional unfitness or substantial evil-mindedness. [Petitioner's Brief below at 34, 35 and 42]. "If the reasoning of the DRB is followed," petitioner's counsel wrote, "it will represent a substantial departure from current law, *and a reckless disregard for the due process rights of attorneys who come before them for discipline.*" [*Id.* at 42]. Paralleling the reasoning of *Morissette, supra,* petitioner's counsel condemned "a presumption of guilt" by the disciplinary system and reminded the Court that an "attorney is innocent until proven guilty." Petitioner's counsel called upon the New Jersey Court to carefully evaluate petitioner's state of mind, rather than to presume it, noting that "Anglo-Saxon Jurisprudence has long recognized gross negligence as a distinct standard . . . and New Jersey Courts have recognized the distinction between gross negligence and willful, knowing conduct." *Id.*

Notwithstanding the foregoing argument, the state Court in *Skevin* simply presumed that Mr. Skevin acted with corrupt intent and presumed he was unfit to practice law.

The federal constitutional implications of the New Jersey Court's breach of confidentiality also was carefully raised below. "[T]he attorney facing disbarment is entitled as a matter of right to procedural due process," petitioner's counsel wrote in the brief below citing *In re Ruffalo*, 390 U.S. 544 (1968). "This requires that principles of basic fairness be observed. These rights are guaranteed by the Fifth and Fourteenth Amendments." Petitioner's brief went on to condemn the New Jersey disciplinary system's breach of confidentiality as a violation of Mr. Skevin's "right to privacy" and, citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966), contended that adverse publicity "made it impossible for Mr. Skevin to receive a fair determination." [Petitioner's Brief below at 52 and 60].

While admitting that it was "deeply troubled" [App. 15] by the breaches of confidentiality, the Court below declined to dismiss the charges against Mr. Skevin.

Finally, it should be noted that on December 14, 1986, petitioner moved in the New Jersey Supreme Court for a stay of its disbarment Order and in support of that motion presented that Court with a near-final draft of petitioner's motion for a stay in this Court. The draft included citation and full discussion of *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957). Although the New Jersey Court had the power at that point *sua sponte* to rule on those constitutional issues, cf., e.g. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 430-31 (1982), it merely issued a three-day stay.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

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Attorney for Petitioner

*Counsel of Record

APPENDIX A

SUPREME COURT OF NEW JERSEY

D-2 September Term 1986

IN THE MATTER OF
JOHN M. SKEVIN,
An Attorney at Law.

Argued September 8, 1986—Decided November 14, 1986

On an order to show cause why respondent should not be disbarred or otherwise disciplined.

Thomas J. McCormick, Assistant Ethics Counsel, argued the cause for Office of Attorney Ethics.

Leon J. Sokol argued the cause for respondent (*Greenstone & Sokol,* attorneys; *Michael C. Urciuoli* and *Frank A. Campana,* on the brief).

PER CURIAM.

This case arises from a report and recommendation of the Disciplinary Review Board (DRB) that respondent be disbarred. The Board's report follows the finding of a Special Master appointed to make a factual record with respect to certain charges of ethical misconduct that had been made against respondent. We find, as did both bodies, that the record demonstrates by the required standard of clear and convincing proof, that violation of the tenets of *In re Wilson,* 81 *N.J.* 451 (1979), has been shown and that under those principles the conduct must result in disbarment.

I.

Because of the paramount importance of the *Wilson* issue, we shall but briefly detail the other ethical matters

that were heard, since the findings on none would have merited disbarment. We shall refer to the matters by the count numbers in the Second Amended Complaint that formed the basis of the hearing below.

Count One, the *Dodd* matter, involved a dispute regarding the handling of a real estate matter by Mr. Skevin. He represented the Dodds as purchasers in a substantial commercial transaction. Since certain title problems remained at the closing, he held a $35,000 escrow. He released $20,000 to the sellers approximately two weeks after the closing. He was deficient in recording the deed and mortgage, apparently due to a breakdown in his office management. A purchase money mortgage was not recorded for almost two months after the closing. He did not properly resolve the various tax and title problems that caused the escrow to be set up.

As a result of these various delays, when his client sought to "flip" the property through quick resale, title problems arose that occasioned delay and caused the Dodds' attorney on the resale to set up a $10,000 escrow to clear the matters. The client complained that Mr. Skevin turned over the $20,000 from the escrow to the seller without satisfactory clearance from the title company. But the Special Master found, and we agree, that the disbursements to the seller, as well as additional disbursements to the Internal Revenue Service, the municipal tax office, and the State of New Jersey Division of Taxation, were appropriate payments to be made from the escrow account. After these disbursements, however, Mr. Skevin was still responsible for a balance of at least $7,654 from the $35,000 escrow account. Examination of his accounts disclosed that during the requisite period between the closing and the satisfac-

tion of the escrow items, there was a shortage in Mr. Skevin's trust account. As late as June 8, 1982, the trust account balance was $4,367, an amount less than the $7,654 necessary to cover the balance of the escrow. It is this latter point that we shall address in the consideration of the *Wilson* violations.

But as to the other claims, we agree with the finding of the Master that the failure to record the deed and purchase money mortgage promptly was a matter of professional neglect that would not have warranted a disciplinary action. The payments made by Mr. Skevin from the account were justified. The requirement of a $10,000 escrow account was something for which Mr. Skevin was not directly responsible and the proofs are lacking that any improper conduct of Mr. Skevin caused his client to participate in the $10,000 escrow on the resale.

Count Two of the complaint dealt with the *Schrader* matter, the complaint that appears to have generated the most controversy. The case involved a personal injury matter that Mr. Skevin handled on behalf of his client, John Schrader. Schrader had suffered multiple injuries and one of his legs had to be amputated below the knee. Mr. Skevin had done considerable legal work for the parents and was retained to represent John. Suit was brought and on November 1, 1982, the case was settled for a total of $250,500 with several defendants contributing to the settlement. Payments came in at various intervals, beginning in November of 1982 and ending with final payment on January 25, 1983. The total fee allowable to Mr. Skevin was $57,094.

The ethics complaint grew out of a dispute between the Schrader family and Mr. Skevin as to what his fair

charges should have been. The Schraders had asked for an accounting before the March 1, 1983 filing of the ethics complaint. Eventually, the Schraders obtained their own attorney, and as a result of those communications a formal accounting was rendered on April 20, 1983. The key ethical allegations here are that Mr. Skevin delayed the accounting, wrongfully withheld funds due his clients, improperly made advances both to himself and his client prior to the receipt of the settlement funds, sought unlawfully to extract payments from the clients out of the settlement proceeds, and illegally endorsed one of the settlement checks in the matter.

On the substantive contentions, the Master found that Mr. Skevin had at least an arguable claim to a portion of the proceeds that were due to him from other matters of the Schraders. Some amounts of this claim were eventually determined through arbitration between the Schrader parents and Mr. Skevin, others through release. The Master further found that the evidence was inconclusive with respect to whether there was oral authorization by John Schrader to sign the settlement check. The Master stated that the delay caused in settling this matter was not caused by any fraudulent claim by Mr. Skevin and concluded, "[h]e thought, rightly or wrongly, that he had a claim to be so compensated. Events subsequent to the accounting of April 20, 1983 should be treated as a business dispute, rather than a question of Disciplinary Rule violation."

Of course, the Master found that the advances to Mr. Schrader prior to the receipt of the settlement funds were inappropriate and unauthorized. But the Master said:

> The conclusion is that the loans [made to the client and the withdrawal of fees and disbursements before receipt of the settlements funds] represent a misuse of funds held in trust for clients other than Schrader, or use of personal funds that should not have been commingled with clients' trust monies or a combination of the two * * * * [but] that the unethical conduct represented by the loans made to the client is conduct for which a private reprimand would constitute adequate discipline.

Count Three, the *Onello* matter, involved a complaint of unethical conduct by Joseph Onello, at former business partner and client of Mr. Skevin. He complained of Mr. Skevin's handling of a real estate transaction in which Mr. Skevin acted as an attorney for the joint venture with Onello. The complaint was primarily based upon Mr. Skevin's failure to get the sellers' taxes assessed and paid promptly and on his failure to record the deed and mortgage promptly. This closing also involved a $10,000 escrow account to be held in Mr. Skevin's trust account pending clearance by the sellers of certain tax liens clouding the title. Shortly after the closing, Mr. Onello bought out Mr. Skevin's interest in the property. On June 1, 1983, Mr. Onello attempted to withdraw his complaint; the District Ethics Committee nevertheless chose to pursue the matter.

There were difficulties with respect to the transaction. It was not until October 10, 1983, some 19 months after the closing, that Mr. Skevin was permitted by the seller's attorney to release the funds. On this matter, the Master recommended dismissal of the substantive charges subject to his observation that although it was clear that Mr. Skevin was to maintain a $10,000 escrow account, the entire balance in the trust account fell below $10,000 dur-

ing a number of intervals in the fall of 1983 between the closing date and the paying out of the $10,000. Money that should have been kept in the trust account to serve as the $10,000 escrow fund was used for purposes not related to the joint venture.

Count Seven, the *Santana* matter, involved an inappropriate advancement of settlement proceeds to an indigent client. The making of loans while the case was pending was a violation of DR 5-103(B) (now RDC 1.8(e)), but the Master believed the matter could have called for a private reprimand.

Count Eight of the complaint referred to a number of matters dealing with failure to obtain fee agreements, failure to advise of alternate fees, or miscalculation of contingent fees. All of these were dismissed by the Master. Count Nine of the complaint dealt primarily with overdrafts in Mr. Skevin's business and personal accounts, matters that were characterized by the presenter as "de minimis" and would not have warranted disbarment. There was, however, an admitted allegation with respect to a trust fund check being dishonored for insufficient funds but which respondent reissued with adequate funds available.

II.

Our central focus must be on Counts Four, Five and Six of the superseding complaint that the Office of Attorney Ethics served upon the respondent. These counts charge that respondent *knowingly* misused client trust funds, did not maintain separate accounts for trust and business records, did not maintain contemporaneous trust

account records as required by Rule 1:21-6 for 1982 and 1983, and extensively commingled clients' funds with his own. For the purpose of simplicity, Counts Four, Five and Six will not be treated separately given the similarity of the allegations and ethical misconduct. The background to these charges is that in investigating the complaints of *Dodd, Schrader* and *Onello,* the Office of Attorney Ethics caused an audit to be made of the respondent's financial affairs. During the course of that audit it was learned that respondent had for several years commingled personal and client funds in his attorney trust account.

This practice clearly violates Rule 1:21-6, which provides in pertinent part:

> Every attorney who practices in this state shall maintain in a financial institution in New Jersey * * * :
>
> (1) a trustee account or accounts, separate from any business and personal and from any fiduciary accounts * * *, into which trustee account or accounts funds entrusted to the attorney's care shall be deposited; and
>
> (2) a business account into which all funds received from professional services shall be deposited.
>
> Other than fiduciary accounts * * *, all trustee accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account."

The conduct also violated Disciplinary Rule 9-102(A), in force during the relevant years, which stated that escrow funds of clients paid to the lawyer had to be maintained in identifiable accounts separate from the attorney's business account. Present Rule of Professional Conduct 1.15(a) essentially restates this mandate. Further investigation

disclosed that respondent's accounts were apparently "out of trust" over an extended period of time in 1982 and part of 1983.

Because of concern for clients' funds, the Office of Attorney Ethics (OAE) petitioned for immediate temporary suspension of respondent pursuant to Rule 1:20-4(g) in March 1984. In support of that application the OAE submitted the investigation and audit of its accountant, Louis Brief, which disclosed that in addition to the lack of contemporary trust account records, the reconstructed records showed substantial deficits in respondent's trust balances, ranging from $12,469 in June 1982 to $133,476 in December 1982. Specifically, the evidence contained in Exhibit C-105 showed that respondent was out of trust as follows:

June 1, 1982	$ 12,469.99
July 1, 1982	70,267.31
August 1, 1982	72,252.18
September 1, 1982	65,618.20
October 1, 1982	92,552.27
November 1, 1982	114,704.29
December 1, 1982	133,476.40

The respondent denied that he had knowingly misused clients' funds, noting that he had deposited close to $1 million of personal funds in the account during the relevant periods of time, which would have, he thought, been sufficient to cover any personal withdrawals from the account. His accountant factually disputed the contentions of the OAE's accountant that there was a deficit in his account in excess of $133,000 as of December 1982. At this point, respondent's accountant said that the deficit was far less

and was the result of mere inadvertence in handling the account. With the central matter of knowing misappropriation being in dispute and believing that the public interest could be protected by permitting the proofs to be resolved before terminating respondent's practice, the Court denied the petition so long as the accounts were supervised under proctorship to be regularly reviewed in the disciplinary process.

Resolution of the disputed issues required a fuller examination of respondent's books of account and extended study of the many transactions that occasioned the charge of misuse of trust funds. A broadly experienced retired trial judge was selected as Master to conduct that factual hearing. At the hearing, respondent stipulated to many of the basic underlying facts, particularly the basic facts concerning the *Dodd, Schrader* and *Onello* matters. Some concern has been raised that certain claimants in those matters were precluded from offering personal testimony with respect to the matters in issue after apparently receiving subpoenas to testify. We believe that oral proof would not have aided the Master in resolution of the disputed issues and we are satisfied that the proofs would not have been dispositive as to the ultimate proceedings. Further proof as to the allegedly unauthorized signature to the settlement check would not have altered the result significantly since the question turns not on the receipt of the funds but the ultimate disposition of the funds, a matter disclosed by the record. We regret the misunderstanding that occasioned the clients to believe that their evidence was wrongly withheld; perhaps more care should be taken to explain the meaning of stipulations to the aggrieved parties.

For the reasons that we shall later state in more detail, respondent has conceded that there were undoubtedly oc-

casions when clients' funds had been used because the outstanding balances in the trust account were insufficient to cover the amounts that were admittedly due to clients. The exhibits and testimony before the Master clearly and convincingly demonstrate the basic facts with respect to the commingling of clients' funds with personal funds, the lack of required recordkeeping on respondent's part, and the existence of actual deficits in the trust account. The respondent's expert eventually recognized that the shortfall in December 1982 had to be at least $105,000. Specifically, as noted, the *Dodd* deficit was $3,287 on June 8, 1982.

The key issue that the Master and the DRB had to resolve was whether the shortages were the result of knowing misuse or were the product of inadvertent error or neglect in the handling of funds. In our decisions, we have not extended the *Wilson* sanction to such instances of limited, inadvertent and unintentional misuse of clients' funds. *In re Hennessy*, 93 *N.J.* 358, 361 (1983) ("no intentional use of funds belonging to others" warrants public reprimand); *In re Noonan*, 102 *N.J.* 157 (1986) (gross negligence insufficient to warrant disbarment where attorneys did not know client's money misappropriated).

The Master concluded that this case did not fall into the pattern of those cases. The marshalled evidence that distinguishes this case from those was that respondent clearly knew that he was withdrawing clients' funds from commingled accounts on each occasion when he drew his on fees or disbursements in advance of receiving settlement checks. Exhibit C-101 before the Master disclosed specific instances of plaintiff's personal injury practice in which respondent reimbursed himself for fees and costs by with-

drawing funds from his trust account before settlement proceeds were received. The time periods were sometimes substantial, as long as months between the advance to himself and the receipt of the settlement checks. The amounts were also substantial, ranging from hundreds of dollars to thousands. These two facts lead to the unavoidable inference that respondents knew that he was endangering other clients' funds that were in the commingled account. The same exhibit, C-101, also disclosed that respondent rarely distributed funds to clients before settlements proceeds were received. But when it happened, he had to know that an unauthorized withdrawal from a commingled account was occurring.

Both of these practices were highlighted in the *Schrader* case. Respondent, although knowing that he had not yet received the settlement proceeds, undertook to draw on the uncollected and, indeed, unreceived funds admittedly for the client but also for his own account. In doing so, he knew that he was invading the trust account that by his own admission contained both clients' funds and personal funds. Had respondent maintained a separate, personal account for such purposes, his position might be defensible. But respondent candidly admitted he just assumed there was enough money in the trust account to handle the trust disbursements. It is also undisputed that he did not maintain an accounting or running balance of his own funds in the trust account. Hence, it follows that each such advance posed an at least realistic likelihood of invading the accounts of another client since respondent had no way of knowing what the balances were. *Cf. In re Fleischer, supra,* 102 *N.J.* at 447 (while poor accounting does not establish a knowing misappropriation, poor ac-

counting is not a *Wilson* defense if evidence indicates knowing misappropriation).

While such evidence might not sustain a finding of criminal intent to deprive others of their funds, the evidence clearly and convincingly demonstrates that defendant knew the invasion was a likely result of his conduct, a state of mind consistent with the definition of knowledge in our statute law. *N.J.S.A.* 2C:2-2b(2). The concept arises in a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist. "Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases." 2 Final Report of the New Jersey Criminal Law Revision Commission, *The New Jersey Penal Code*, 44 (1971) (commentary) (citing *State v. Jusiak*, 16 *N.J. Super.* 177, 181 (App. Div. 1951); *State v. Loomis*, 89 *N.J.L.* 8 (Sup. Ct. 1916); *accord Model Penal Code and Commentaries* (Official Draft and Revised Comments) § 2.02(7), 248 (comment) (1985).

Further confirmation for the finding, as set forth by the Master, is in his analysis of the 1983 deficits related to the *Dodd, Schrader* and *Onello* matters. It is undisputed that the respondent had to make a $25,000 loan to the trust account on March 16, 1983, for the purpose of paying Schrader an additional $25,000 on his award. Respondent was thus personally aware on that date that his handling of the trust account had produced the deficit result. Notwithstanding that knowledge, respondent continued to withdraw funds and the account remained in a deficit state in 1983 in that the $10,000 due to Onello did not remain intact in

the account. *Exhibit C-93,* statement dated 3-31-83. As noted, the Onello closing took place on March 5, 1982, but the final disposition of trust proceeds did not take place until October 10, 1983. Respondent admitted that he was the only person with any real authority over or supervision of the account. Although some administrative duties were entrusted to his secretary, she was not asked to balance the account, nor did she see the trust account bank statements. Hence, we must concur with the Master that

> [t]he finding is that he knew in 1982 and 1983 of the deficit condition of his trust account and knew that the condition had been produced, and was being continued, by writing checks against trust accounts that should have remained untouched until used for the purposes for which they had been entrusted to him.

But again, respondent's prior handling of the trust account, even without this additional evidence, would have been sufficient to prove by clear and convincing evidence a knowing misappropriation.

III.

Although we have concluded that the *Wilson* sanction must be invoked here, there is an aspect to this case that deeply troubles us. Respondent moved before the Master to dismiss the proceedings in whole or in part because of the apparently deliberate breach of the confidentiality of the disciplinary proceedings. The Master ruled that if only individual parties were involved, dismissal might be appropriate; but the fact that there was a public interest involved tipped the balance so as to preclude dismissal. We agree.

We have taken extraordinary steps to protect the public interest in ethics disciplinary proceedings by afford-

ing to litigants who respect its confidentiality an immunity from suit for malicious prosecution. *R.* 1:20-11(b); *In re Hearing on Immunity For Ethics Complainants*, 96 *N.J.* 669 (1984). In exchange, we insist only that the parties who invoke the disciplinary process respect its concept of confidentiality until a finding is made. We do this because we believe that in balancing the interest in vindicating clients' rights with an attorney's professional reputation for integrity, we must recognize that even an unsubstantiated charge can, if misunderstood, do irreparable damage to an attorney without any corresponding public benefit. The record in this case demonstrates the result of such unauthorized disclosures. The evidence testified to by Mr. Skevin is that he suffered a serious decline in his professional practice while these proceedings were pending. With the exception of the *Wilson* violations, almost all of the matters complained of were resolved in a manner that almost certainly would not have resulted in disbarment or serious discipline. The circumstances thus demonstrate how an attorney may be tried and convicted, before the facts are known, through manipulation of events outside the hearing room. In almost all of the matters the clients complained of, respondent's deficiencies were either disproven or were not of ethical gravity. We cannot expect those not directly concerned with the administration of justice to share our concern for a fundamental fairness that would insist on respecting the peculiarly sensitive nature of these proceedings; still, we should take steps to guarantee that fairness against abuse.

Though it would be of no benefit to respondent now, others may be protected from such unfairness by our insistence upon respect for the confidentiality rules and a

clear understanding by *any participant* in the process that he will not only forfeit any immunity from just prosecution for malicious abuse of the process, but that should he violate the rules of the disciplinary process he should expect that the sanctions of the law would be invoked.

Finally, we must advert to the extraordinary suffering that this individual respondent has incurred. We note the ravaging diseases that afflicted his mother, his son, and his sister, the consequences of which contributed to the decline of his marriage, and the breakup of his family, as well as his own personal health problems. They cannot be ignored. There is a limit to the ability of any human to cope with such adversity. This is a tragic end to the only partially fulfilled promise of a public servant and counsellor. In the matter most grievously complained of, the *Schrader* matter, it appears that the respondent obtained a significant award for this young accident victim in gaining the $250,500 settlement. It has been urged that his advancement of the client's funds was motivated by a desire to help his client overcome the adversity that arose from the client's disagreement with his own family over a marriage that resulted in the client being out of his house with no place to live. The same motives apparently prompted the handling of the *Santana* matter. This young man was apparently alone and unaided in the community and relied upon respondent for more than legal advice. There is no venality in that conduct.

We recognize the human suffering occasioned by the almost inflexible invocation of the *Wilson* standard. But we have been unable to rationalize the qualitative differences that would excuse the violation in the case of one

suffering disease or defeat, or one suffering from drugs or other dependency from one suffering the anguish of collapsing home life or marriage due to economic or other strains. Consequently, we have chosen to resolve the choice of professional discipline by maintaining our primary focus on the public interest. In doing so, we have been compelled to apply the *Wilson* sanction to attorneys of unblemished record whose misuse of funds had not injured clients, *In re Lennan*, 102 *N.J.* 518 (1986), and to attorneys who had devoted considerable amounts of their practices and lives to helping needy litigants. *In re Brown*, 102 *N.J.* 512 (1986). We do so here.

The judgment is that respondent be disbarred.

Justices Clifford, Handler, Pollock, O'Hern, Garibaldi and Stein join in this opinion. Chief Justice Wilentz did not participate.

SUPREME COURT OF NEW JERSEY

No. D-2 September Term 1986

Disposition Disbar

IN THE MATTER OF
JOHN M. SKEVIN

An Attorney at Law.

Decided November 14, 1986
Order returnable
Opinion by PER CURIAM

APPENDIX B

SUPREME COURT OF NEW JERSEY
D-2 September Term 1986

IN THE MATTER OF
JOHN M. SKEVIN,
An Attorney at Law.

ORDER

It is ORDERED that JOHN M. SKEVIN of HACKENSACK, who was admitted to the bar of this State in 1956, be disbarred and that his name be stricken from the roll of attorneys of this State, effective immediately; and it is further

ORDERED that JOHN M. SKEVIN be and hereby is permanently restrained and enjoined from practicing law; and it is further

ORDERED that respondent comply with Administrative Guideline No. 23 of the Office of Attorney Ethics dealing with disbarred attorneys; and it is further

ORDERED that respondent reimburse the Ethics Financial Committee for appropriate administrative costs.

WITNESS, the Honorable Robert L. Clifford, Presiding Justice, at Trenton, this 14th day of November, 1986.

/s/ Stephen Linuseurd
CLERK

APPENDIX C

1:21-5. *Counsellors; Masters Abolished*

The titles of Counsellor-at-law of this State, Master of the Superior Court, and Special Master, Commissioner or Examiner of the Superior Court, are abolished.

Note: Source—R.R. 1:21-1, 1:21-2, 1:21-3.

1:21-6. *Recordkeeping; Sharing of Fees; Examination of Records*

(a) *Required Bank Accounts.* Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

(1) a trustee account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trustee account or accounts funds entrusted to the attorney's care shall be deposited; and

(2) a business account into which all funds received for professional services shall be deposited.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all trustee accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account". Nothing herein

shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as either an "Attorney Business Account", an "Attorney Professional Account" or an "Attorney Office Account".

The names of institutions in which such accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to R. 1:20-1(b) and R. 1:28-2, to the Ethics Financial Committee and the Clients' Security Fund of the Bar of New Jersey. Such information shall be available for use in accordance with paragraph (g) of this rule.

An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court which shall annually publish a list of such approved institutions. An financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether or not the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by said financial institutions shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the de-

positor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within 5 banking days of the date of presentation for payment against insufficient funds. In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records upon receipt of a subpoena therefor. Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(b) *Required Bookkeeping Records.* Attorneys, partnerships of attorneys and professional corporations who practice in this State shall maintain in a current status and retain for at period of 7 years after the event which they record:

(1) appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns of affects

their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by authorized intrastate or interstate bank transfer or by check payable to a named payee and not to cash. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account; and

(2) an appropriate ledger book, having at least one single page for each separate trust client, for all trustee accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and

(3) copies of all retainer and compensation agreements with clients; and

(4) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and

(5) copies of all bills rendered to clients; and

(6) copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and

(7) all checkbooks and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips; and

(8) copies of all records, showing that at least quarterly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and

(9) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(c) *Type and Availability of Bookkeeping Records.* The financial books and other records required by paragraphs (a) and (b) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies can be made on demand in accordance with this section or section (g). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their

contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

(d) *Dissolutions.* Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (b) of this rule.

(e) *Members, Associates and Employees of Out of State Firms.* No attorney who practices in this State who is a member of a firm, or an associate or employee of a firm or attorney, practicing outside this State:

(1) shall share with such firm or attorney any fee for legal services rendered in this State if payment to such firm or attorney is prohibited by R.P.C. 1.5(e) of the Rules of Professional Conduct; or

(2) shall fail to maintain and preserve for 7 years separate records of the fees received and expenses incurred in the attorney's practice of law in this State.

(f) *Attorneys Associated With Out of State Attorneys.* An attorney who practices in this State shall maintain and preserve for 7 years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.

(g) *Availability of Records.* Any of the records required to be kept by this rule shall be produced in response to a subpoena *duces tecum* issued in connection with an ethics investigation or hearing pursuant to R.1:20-1 to 1:20-

11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

(h) *Disciplinary Action.* An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce such records as required shall be deemed to be in violation of R.C.P. 1:15(d).

(i) *Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners.* When, for a period in excess of 2 years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of 1 year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for

deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.

Note: Source—R.R. 1:12-8A(a)(b)(c). Caption amended and paragraph (d) adopted July 1, 1970 effective immediately; paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended April 2, 1973 to be effective immediately; paragraph (c) amended July 17, 1975 to be effective September 8, 1975; caption and paragraph (a) amended July 29, 1977 to be effective September 6, 1977. Paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraphs (c), (d), (e), (f) and (g) redesignated and amended February 23, 1978 to be effective April 1, 1978; paragraphs (b), (c) and (h) amended November 22, 1978 to be effective January 1, 1979; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b), (c), (g) and (h) amended January 31, 1984 to be effective February 15, 1984 except that the amendments to paragraph (a)(2) regarding designations to be placed in trust and business accounts shall not be effective until July 1, 1984; effective date of amendment to paragraph (a)(2) deferred on June 15, 1984 from July 1, 1984 to September 1, 1984; paragraphs (a)(1) and (2), (c)(1) and (h) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a), (c) and (f) amended November 1, 1984 to be effective March 1, 1985; paragraphs (b) and (c) amended and paragraph (i) adopted November 5, 1986 to be effective January 1, 1987.

1:21-7. *Contingent Fees*

(a) As used in this rule the term "contingent fee arrangement" means an agreement for legal services of an attorney or attorneys, including any associated or forwarding counsel, under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula.

(b) An attorney shall not enter into a contingent fee arrangement without first having advised the client of the right and afforded the client an opportunity to retain him under an arrangement whereby he would be compensated on the basis of the reasonable value of his services.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33⅓% on the first $250,000 recovered;

(2) 25% on the next $250,000 recovered;

(3) 20% on the next $500,000 recovered; and

(4) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and

APPENDIX D

Supreme Court of the United States

No. A-463

JOHN M. SKEVIN,

Applicant,

v.

SUPREME COURT OF NEW JERSEY

O R D E R

UPON FURTHER CONSIDERATION of the application of counsel for the applicant, and the response filed thereto,

IT IS ORDERED that the order of the Supreme Court of New Jersey, case No. D-2086, entered December 16, 1986, be and the same is hereby, continued pending the timely filing of a petition for writ of certiorari in the above-entitled case. In the event the petition for a writ of certiorari is so timely filed, this order is to remain in effect pending this Court's action on the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this order is to terminate automatically. If the petition for a writ of certiorari is granted, this order is to remain in effect pending the issuance of the mandate of this Court.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme
Court of the United States

Dated this 23rd day of December, 1986.

A true copy JOSEPH F. SPANIOL, JR.
Test:

Clerk of the Supreme Court of the
United States

By: Frances J. Carson
Chief Deputy

Supreme Court of the United States

No. A-463

JOHN M. SKEVIN,

Applicant,

v.

SUPREME COURT OF NEW JERSEY

O R D E R

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the order of the Supreme Court of New Jersey, case No. D-2-86, entered December 16, 1986 be and the same is hereby continued, pending receipt of a response due on or before December 22, 1986, at noon, and further order of the undersigned or of the Court.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme
Court of the United States

Dated this 17th day of December, 1986

A true copy JOSEPH F. SPANIOL, JR.

Test:
Clerk of the Supreme Court of the
United States

By: Francis J. Carson
Chief Deputy

APPENDIX E

STATE OF NEW JERSEY

ss

COUNTY OF BERGEN

I, RAYMOND F. FLOOD, ESQ., upon my oath depose and say:

1. I am an attorney licensed in the State of New Jersey, with offices at 39 Hudson Street, Hackensack, New Jersey.

2. On or about July 20, 1984, I was advised that I had been appointed by the New Jersey Supreme Court to serve as a proctor for John M. Skevin, Esq. As part of my duties, I became a co-signator on his regular business and trust account, and supervised the general financial affairs of his practice.

3. To assist me in this matter, I engaged William Morrison, a certified public accountant who has reviewed Mr. Skevin's accounts on a monthly basis and prepared a monthly report which we have submitted to the Office of Attorney Ethics.

4. I've been informed by Mr. Skevin that he has given up his practice and has become of counsel to the firm of John Paolella located at 479 Main Street Hackensack, New Jersey. As part of this arrangement, Mr. Skevin will no longer be a signator on any business or trust accounts. All of the fees he earns for legal services rendered will be paid to Mr. Paolella's firm, and then Mr. Paolella will in turn pay Mr. Skevin in accordance with a contractural arrangement.

5. In view of the fact that Mr. Skevin no longer has financial affairs to supervise, I have requested that the Supreme Court relieve me of my proctor responsibilities.

6. In the course of the past year that I have served as Mr. Skevin's proctor, I have observed him professionally and personally. Mr. Skevin appears to be a competent professional, providing good quality legal services to his clients. Mr. Skevin's legal files appear to be well organized and he obtains good results for his clients which primarily involve negligence actions. I found his bookkeeping and other record keeping to be disorganized, however.

7. I have also observed a steady deterioration in his practice over the past year. It is my impression that because of the adverse publicity which has attended his ethics proceedings, most of his clients have left him. Those who have stayed have primarily been persons with whom he has a personal relationship.

8. This deterioration in his practice has caused him severe financial difficulty, and placed him under substantial pressure. I note that as the practice has deteriorated, Mr. Skevin has become increasingly anxious in his financial affairs. He has sought to borrow money from friends, some of whom are also clients, and in one instance I had to question the propriety of his seeking a loan from a friend for whom he had rendered legal services and obtained a substantial judgment just a few weeks prior. It should be noted that the amount of the loan was $60,000.00, which represented a substantial portion of the net proceeds of the settlement. ($84,366.68 to the client). I called this to

Mr. Skevin's attention and he returned the money to those persons and arranged to borrow it from another source.

/s/ Raymond F. Flood, Esq.

Sworn and subscribed to before me this —— day of July, 1985.

APPENDIX F

THE STAR-LEDGER, Friday, June 8, 1984

Suspension of attorney asked pending ethics hearings

Ex-legislator accused of misusing client trust funds

By ROBERT G. SEIDENSTEIN

An attorney disciplinary official yesterday urged the New Jersey Supreme Court to temporarily suspend former state Sen. John Skevin of Bergen County from the practice of law.

Thomas McCormick, chief of hearings for the Office of Attorney Ethics, told the court that Skevin had used client funds "as his own private bank" and that an audit of his records showed a $147,000 shortfall in funds supposedly being held in trust for his clients.

McCormick also said that Skevin had improperly comingled his own money with the trust funds.

Skevin's attorney, Leon Sokol, said, on the other hand, that the matter merely involved "sloppy bookkeeping." He added that there was "not an intentional" misuse of client funds.

Sokol put the shortfall in trust funds at $32,000 as of the end of 1982 and noted that Skevin had taken corrective steps regarding the funds.

Yesterday's hearing represented the first public word that the former legislator was facing attorney ethics charges. The court reserved decision on whether to temporarily suspend Skevin while the proceedings against him continue.

Trust funds are accounts lawyers hold for the benefit of clients. Strict disciplinary rules govern such accounts.

During yesterday's hearing in Trenton, Justice Robert Clifford noted that there were "admittedly appalling lapses of bookkeeping" on Skevin's part.

Skevin, a Democrat, lost his state Senate seat in the 1981 election. He was elected to the Assembly in 1965 and first elected as a senator in 1973. He practices law in Hackensack.

• • •

Sokol, in arguing against temporary suspension of his client, admitted that Skevin had comingled more than $1 million in his own investment money—garnered over several years—with client trust funds. Even though he could not "hold him up as a model of bookkeeping," Sokol said that Skevin always had "well-represented" his clients.

Sokol added that as far as the trust funds were concerned, the money was "all restored" and that all claims made by clients "have been satisfied."

Justice Clifford, however, noted allegations regarding Skevin's alleged practice of "lending" money from the comingled account "to himself." And Justices Sidney Schreiber and Stewart Pollock pressed Sokol as to why Skevin had comingled accounts and used trust funds for his own purposes.

Sokol responded that Skevin had been acting that way for years. He said Skevin saw the comingling of his own funds with client funds as a "safeguard" against bank overdrafts.

Skevin, who attended the court session, declined comment on the disciplinary action being taken against him.

McCormick predicted that disciplinary board hearings into the underlying case against Skevin would be completed within two months. Several justices, however, were skeptical about the matter being dealt with in such a short period.

• • •

The New Jersey Supreme Court has ultimate authority to discipline lawyers in the state. It generally exercises its authority by reviewing recommendations regarding sanctions against particular attorneys.

At the close of yesterday's session, Sokol agreed to find someone to serve as co-trustee of accounts held by Skevin.

John Skevin
$147,000 shortfall

THE NEW YORK TIMES, SUNDAY, AUGUST 26, 1984

Ex-State Senator Faces Ethics Inquiry

By ALBERT J. PARISI

HACKENSACK

JOHN M. SKEVIN, once a legislator and still a redoubtable figure in state and Bergen County politics, is battling to retain his license to practice law amid charges that he comingled clients' funds with his own and complaints that are before the State Office of Attorney Ethics in Trenton.

Late in June, the State Supreme Court ruled 4 to 2 not to suspend the 56-year-old lawyer's license pending the outcome of the ethics investigation. But it stipulated that he could practice only under direct supervision of another lawyer, Raymond F. Flood of Hackensack, a former Bergen County assistant prosecutor, who must report monthly directly to the ethics office.

Mr. Skevin was a State Senator from 1974 to 1982, serving on the Senate Judiciary Committee, which oversaw and nominated judges and county prosecutors, and an assemblyman for two.

According to Thomas McCormick, chief hearing officer of the Office of Attorney Ethics, and David Johnson, the office director, Mr. Skevin is charged with misappropriating $150,000 in client funds. The figures were established by a state audit.

By law, lawyers may not intermingle their own and clients' funds. Mr. McCormick said during a Supreme Court hearing in June that Mr. Skevin had violated that regulation for years and that over a three-year period, he had combined some $1 million of his own money with clients' funds and used the comingled accounts as "his own private bank" for real-estate ventures.

Leon Sokal, Mr. Skevin's attorney, called the reported mishandling of funds no more than "sloppy bookkeeping" and said the shortfalls were closer to $40,000.

The complaints before the ethics panel specifically charge that Mr. Skevin continues to owe clients money as a result of overcharging of fees set by the State Supreme Court and of fees for services that were either not rendered or improperly conducted.

About 10 complaints are under review. They are said to involve improper comingling of funds, forgery, misappropriation of client trust funds, professional misconduct and lack of diligence.

Mr. Skevin chose not to comment and referred all questions to his attorney, who would neither confirm nor deny the charges, citing the client-attorney privilege and saying that the ethics investigation was still going on.

In 1979, the State Supreme Court ruled that lawyers found to have misappropriated client funds would be disbarred in almost all instances.

In 1983, Mr. Johnson said, the Office of Attorney Ethics received nearly 1,400 ethics-related complaints. In 1982, he said, there were 1,325 complaints. Nearly half the cases in which lawyers were disciplined by the State Supreme Court involved client funds, he said.

Last year, he said, 31 lawyers were disciplined by the court, with penalties ranging from public reprimands to disbarment. In 1982, 35 lawyers were disciplined and in 1981, 23.

Some legal experts say privately that once the ethics investigation is completed and made public (it is expected to be completed in early October) a number of other ethics-related complaints may arise from clients of the former Senator who are awaiting the outcoming of current charges.

One of the complaints before the Office of Attorney Ethics involves John D. Schrader of Fort Lee.

In June 1979, Mr. Schrader, then 20 years old, was helping a tow-truck operator change a flat tire on his car in Little Ferry when another car struck him. The driver, attempting to flee, backed over him.

Today, after 25 operations and the amputation of his left leg, Mr. Schrader and his father, James, of Teaneck, assert that the young man was taken advantage of by Mr. Skevin, whom they had retained.

According to documents provided by the Schraders, Mr. Skevin, who had previously represented the family in legal matters, had informed them that a $3 million settlement could easily be obtained if the son took the matter to court.

Mr. Schrader took his attorney's advice. In October 1982, after months of legal preparation, the matter was settled out of court for $250,500.

Of that amount, the elder Mr. Schrader said, Mr. Skevin took some $57,000 as a fee and $30,500 in fees on related legal matters and for undocumented disbursement costs, leaving his son with $162,000.

Complicating the matter, the Schraders say, is an insurance check, part of the settlement, made out to both Mr. Schrader and Mr. Skevin and dated Jan. 7, 1983. The check was signed and deposited to a client trust account maintained by Mr. Skevin.

The younger Mr. Schrader said that he had not endorsed the check and had not even found out about it until two months after the funds were deposited.

"I was trying to piece my life back together again at the time," he said. "The last thing on my mind was worrying about the settlement. That's what I hired an attorney for."

Mr. Skevin has produced an affidavit from a secretary, Jean Fostvedt — who has since left his employ — asserting that Mr. Schrader signed all checks made out to him. Mr. Schrader denies this, adding that he had never authorized the use of his signature to anyone on Mr. Skevin's law staff.

Soon after Mr. Schrader confronted the attorney with his knowledge of the check, Mr. Skevin issued two personal checks to the young man in the amount of $40,000.

Mr. Schrader hired a handwriting analyst, the Rev. Norman Werling of Paramus, a Catholic priest. Father Werling, in a notarized report, contends that the Schrader signature on the check was written by Mr. Skevin.

Mr. Schrader, currently unemployed, also maintains that Mr. Skevin still owes him some $15,000 on the out-of-court settlement.

Mr. Sokal said that all claims had been paid and that money Mr. Schrader claims is due him went to pay an outstanding debt owed to Mr. Skevin by the elder Mr. Schrader.

Mr. Schrader maintains that he had never agreed to pay for his father's debt out of funds earmarked for him and that he was improperly charged $5,500 for a malpractice proceeding against Hackensack Hospital that never materialized.

A copy of the contract between Mr. Schrader and Mr. Skevin, drawn nearly two years after the accident at the younger Mr. Schrader's insistence, shows a fee breakdown that does not follow prescribed percentages.

According to the New Jersey Bar Association in Trenton, fees for personal-injury cases prior to January 1984, applicable to the Schrader contract, are as follows:

An attorney is permitted to charge up to 50 percent of the first $1,000 in the settlement; 40 percent of the next $2,000, 33⅓ percent of the next $47,000; 25 percent of the next $50,000; 20 percent of the next $150,000 and 10 percent of any amount exceeding $250,000.

Mr. Schrader's contract follows the fee requirements along the first three points; however, instead of indicating a breakdown of 25 percent of $50,000 and 20 percent of the following $150,000, it states a 25 percent portion of $150,000 followed by 10 percent of amounts over $250,000 (creating the $50,000 gap).

Mr. Schrader said that the attorney also had taken 50 percent of a property damage settlement of $500 in excess of $250,000, when he was entitled to 10 percent, or $50.

A review of Mr. Skevin's accounting of the Schrader settlement, according to documents retained by the family, indicates a number of discrepancies on fees due him.

In an overall accounting tabulation issued to Mr. Schrader, Mr. Skevin seeks $59,716 as a fee for personal injury and property settlement. In a summary letter to an attorney hired by Mr. Schrader to recover funds that he claims are due him, Mr. Skevin seeks $57,100 for personal and property damage.

Mr. Schrader said that while he received an itemized listing of Mr. Skevin's disbursements of $12,250 in the case, he was shown receipts for only about $1,200.

Mr. Schrader has yet to be called to testify before the ethics office. ■

North Jersey RECORD
Tuesday, August 13, 1985

Ethics unit may seek disbarment of Skevin

By Susan Edelman
Staff Writer

The state Office of Attorney Ethics may seek to have Hackensack attorney John M. Skevin disbarred, said a[n] official who recently prosecuted Skevin for misconduct.

A confidential hearing was completed last month on complaints that Skevin, a former state legislator, misappropriated nearly $150,000 in client funds. The retired judge who heard the case is expected to issue a report of his findings soon.

Meanwhile, Bergen County Prosecutor Larry J. McClure said his staff may review evidence submitted during the misconduct hearing to determine whether to file criminal charges against Skevin.

Thomas J. McCormick, chief of hearings for the state Office of Attorney Ethics, said that if the judge finds Skevin guilty, his office will ask that Skevin be disbarred.

"I want to see this guy get what he deserves, at least in my opinion," said McCormick, who presented the case against Skevin at the hearing.

In late 1983, McClure's office declined to charge Skevin with forging a $59,000 check issued as part of a settlement to one of Skevin's client's, John D. Schrader. Schrader's lower leg was amputated after an accident involving a drunken driver.

At the time, the prosecutor said he declined to press charges because of a sworn statement by Skevin's secretary that Schrader had signed all the settlement checks in her presence. During the four-day hearing last month, however, Skevin admitted that he had signed the $59,000 check. Skevin said he had Schrader's oral authorization, which Schrader denied.

Meanwhile, Schrader, 26, and his father, James Schrader, 55, of Teaneck, have complained that their rights were violated because they were denied permission to testify against Skevin or to attend the misconduct hearings.

Skevin was allowed to take the witness stand to defend himself. But the Schraders said that when they showed up July 16 to testify against Skevin, they were asked to leave.

"I just don't think it's fair," said the younger Schrader, who had lodged a complaint against Skevin more than two years ago.

"How can you file a complaint against somebody, and when the time comes for you to tell what the individual did wrong, they refuse to let you testify? What's the point of filing a complaint?"

Several lawyers familiar with New Jersey's attorney-discipline system said people who file grievances against attorneys usually are considered principal witnesses in the hearings. The lawyers also cited rules stating that grievants have a right to be present at all times during the hearings.

In Skevin's case, the retired judge conducting the hearings forbade McCormick to call either of the Schraders as a witness.

Participants said the former Superior Court

See SKEVIN, Page C-2

Disbarment of Skevin sought for handling of client funds

FROM PAGE C-1

judge, Ward J. Herbert of Newark, ruled that testimony by the Schraders was unnecessary because relevant evidence on their position already was on the record.

The four-day hearing was held at the law offices of McCarter & English in Newark, where Herbert practices law. Herbert presided over the Skevin hearing as a volunteer "special ethics master" appointed by the state Supreme Court.

Herbert is expected to issue a report of his findings to the state Disciplinary Review Board, a panel that makes recommendations to the state Supreme Court on disciplining attorneys. Herbert was on vacation last week and could not be reached for comment.

In a 1979 ruling, the Supreme Court stated that attorneys who are found to have misappropriated client funds should be disbarred in almost all instances.

Skevin, once a powerful Democrat, served two years in the Assembly and eight years in the state Senate before being defeated in his bid for a third term in 1981.

Skevin's misconduct hearings involved complaints by two other clients besides the Schraders and a general charge that Skevin tampered with money held in trust for them and other clients.

"We believe Skevin was using the trust account as his personal bank," said McCormick. "He was making disbursements to himself, drawing from his clients' funds."

Skevin maintains that his problems stemmed from sloppy bookkeeping rather than any design to misappropriate client money.

His attorney, Leon J. Sokol of Hackensack, has said Skevin found it "convenient" to mix personal funds he wished to invest with office financial accounts. He said Skevin saw such transactions as "loans from one business entity to another."

Sokol declined to discuss specific complaints but emphasized that Skevin has taken steps to pay clients all the money due them.

The Office of Attorney Ethics announced the allegations in June 1984, when it sought unsuccessfully to have Skevin suspended pending a resolution of the case.

Instead of suspending Skevin, the state Supreme Court appointed Raymond F. Flood, a Hackensack attorney and former first assistant Bergen County prosecutor, to monitor Skevin's law practice.

John Schrader had hired Skevin to file a lawsuit against a drunken driver who struck him June 2, 1979, as he was standing in the Little Ferry traffic circle while trying to move his disabled car. Both of his legs were severely crushed and broken. His left leg had to be amputated below the knee. He has undergone numerous operations to repair the damage.

Skevin filed a lawsuit on Schrader's behalf and arranged various settlements amounting to $250,500.

Besides accusing Skevin of forging his signature on the $59,000 check, one of several received in the settlements, Schrader complained that Skevin withheld the money. Schrader said he discovered that Skevin had cashed the check and deposited it in his bank.

Schrader further complained that Skevin, who took $57,000 as a fee, charged more than state law allows. He also alleged that Skevin billed him for about $10,000 in undocumented expenses.

After Schrader filed a complaint with the state Supreme Court's local ethics committee, Skevin made further payments to Schrader.

Later, Schrader hired another attorney, Eugene Callahan of Hackensack, who arranged a settlement in which Skevin agreed to pay Schrader an additional $14,000. As part of the settlement, Schrader agreed to drop all monetary claims against Skevin, including those in the ethics complaint.

McCormick said that settlement between John Schrader and Skevin also played a part in Judge Herbert's refusal to allow the Schraders to testify.

McCormick said the judge apparently concluded that Schrader had relinquished his right to pursue his ethics complaint. However, rules governing ethics complaints state that they cannot be withdrawn.

Even if Schrader had waived his rights, McCormick said, the Office of Atttorney Ethics would take up the complaint.

"It's like telling a prosecutor, I want to dismiss a criminal complaint; I've been satisfied in a civil settlement," McCormick said. "There's a public interest that goes beyond a personal injury to the individual."

McCormick said he believes Schraders have grounds to ap but that he believes his office sented an adequate case.

"I sympathize with them," he of the Schraders. "I would have l to have seen them have their da court. They could have gotten t viewpoint on the record, and at l vented their spleen."

Sokol called the judge's ruling rect.

Sokol said the other clients filed complaints against Skevin did not testify.

THE STAR LEDGER

Saturday, May 31, 1986

Disbarment asked for former legislator

By ROBERT G. SEIDENSTEIN

An attorney disciplinary review board has recommended that former state Sen. John Skevin be disbarred for mishandling funds he was holding in trust for clients.

The recommendation, which was made public yesterday, sets the stage for a state Supreme Court hearing on Skevin's future as an attorney. The court has scheduled the hearing for Sept. 8.

In the meantime, Skevin will be permitted to continue practicing law under the supervision of another attorney. The supervision was imposed on him by the high court in 1984.

Skevin practices law in Hackensack. He was elected to the Assembly in 1965 on the Democratic ticket and first elected as a senator in 1973. He lost his Senate seat in the 1981 election.

The disciplinary review board's report noted that Skevin "has admitted that he consciously commingled his personal funds with his trust account funds, but that no client was injured as a result."

The board, however, rejected Skevin's defense. "It is clear that he used clients' funds. His 'unauthorized temporary use' for his own purpose, regardless of whether he derived any personal gain, is misappropriation. The record demonstrates that ... (his) trust account had substantial deficit balances throughout 1982."

The board added, "No attorney can remain in perpetual, blissful ignorance of trust account shortages running over $100,000 unless he knowingly chooses not to see."

It noted, "The legal profession is unique in that its practitioners are entrusted with millions of dollars of the funds of others without the requirement of bonding or other direct supervision. The basis for this trust is the presumption that attorneys ... will discharge their fiduciary obligations both ethically and responsibly. The public is entitled to no less. Professed ignorance of basic record-keeping will, in the future, be viewed skeptically as an excuse for imperiling the integrity of client trust funds."

The board said Skevin mishandled the funds of a number of clients, including a man who had his leg amputated as a result of an accident. Skevin had obtained a $250,000 settlement for the accident victim. The victim later had to hire another attorney to represent him in his efforts to get all the money he claimed he was due from Skevin.

At a hearing in 1984, Leon Sokol, Skevin's attorney, said the charges against the former lawmaker involved "sloppy bookkeeping."

Thomas J. McCormick argued the Skevin case to the disciplinary board on behalf of the Office of Attorney Ethics.

Skevin: from clout to likely disbarment

By Harvey Fisher
The Record's Trenton bureau

TRENTON — In the 1970's, John M. Skevin was riding high as one of Bergen County's most powerful Democrats and a lawyer whose business kept growing. Since then, he has lost his political clout and now appears on the verge of being disbarred.

A special board that oversees attorney ethics made public Friday a scorching report recommending that the former state senator be banned from practicing law because he repeatedly misappropriated his clients' money.

"It is clear that he used clients' funds," the board said. "His unauthorized temporary use for his own purpose, regardless of whether he derived any personal gain, is misappropriation."

The recommendation from the Disciplinary Review Board, a nine-member panel that includes six lawyers, was delivered to the New Jersey Supreme Court, which ultimately will determine Skevin's fate.

Skevin, who lost his Senate seat in 1981 and failed in a political comeback attempt two years later, has been ordered to appear before the Supreme Court Sept. 8 to give reasons why his attorney's license should not be lifted.

He could not be reached for comment about the board's recommendation.

The Supreme Court has modified recommendations from the Disciplinary Review Board in the past, but the board said its conclusion that Skevin should be disbarred is tied directly to guidelines handed down over the years by the high court.

The Supreme Court ruled in 1979 that disbarment is automatic whenever lawyers are shown to knowingly have misappropriated or misused funds in their clients' trust accounts.

Under regulations in effect since 1967, trust accounts are never to be used by attorneys for private purposes. The board found that for at least 13 successive months beginning in January 1982, Skevin's trust accounts showed shortages ranging from $12,469 to $133,476. It said he made unauthorized loans from the accounts, at times inappropriately combined at least $1 million of his own money with the clients' funds, and failed to maintain required records.

The review board said Skevin knew what he was doing when he dipped into those accounts or combined his own funds with them. Probers in the past said Skevin used the combined funds much like his own personal bank account for real-estate ventures.

Leon Sokol, Skevin's attorney, has said Skevin reimbursed his clients for all shortages in their accounts.

Charges of unethical conduct were first filed against Skevin 38 months ago. But in a 1984 decision considered somewhat unsual, the Supreme Court declined to temporarily suspend Skevin pending the completion of a full probe, even though investigators had said there was sufficient evidence to

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John M. Skevin
Excoriated by ethics panel

warrant immediate suspension.

Now, however, time may be running out for the man who spent two years in the state Assembly and eight in the Senate, and was a member of a powerful committee that reviewed the nominations of judges and prosecutors.

Only a few months ago, the high court again left virtually no escape from disbarment for lawyers who misappropriate funds of clients.

In that decision, the court said it is irrelevant if the money is used for good or bad purposes, for the benefit of the lawyer or others, or even if the attorney intended to return the funds or did, in fact, return the money.

The 59-year-old Skevin, who has a law office in Hackensack, has been beset by personal and professional problems in recent years. His first marriage ended after 24 years, there has been serious illness in the family, and Skevin himself has undergone psychiatric counseling. Court records further show his law business has shrunk from the days when his political clout apparently helped attract numerous new clients.

The board said Skevin knew his trust accounts were in the red for more than a year. "No attorney can remain in perpetual, blissful ignorance of trust account shortages running over a hundred thousand dollars unless he knowingly chooses not to see," the board declared.

"Respondent's [Skevin's] studied ignorance is not credible," the board added. "To restate an old truism: 'Ignorance of the law excuses no man; not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.'"

The ethics probe involved complaints brought by three former clients about the way Skevin handled their cases and their funds.

One of the clients, John Schrader of Teaneck, complained in March 1983 that despite his requests to Skevin, the lawyer had not given him a full accounting and all the money due from the settlement of an accident case.

Records also show Skevin signed Schrader's name on a check made out to Schrader. Skevin contends he received Schrader's permission to do so, but Schrader denies it.

No excuses for lawyers who violate client trust

By HERB JAFFE

The State Supreme Court is holding fast to a standard it adopted in 1979 and reinforced earlier this year, that lawyers who dip into their client trust funds must face disbarment.

As a result, the court has removed five persons from the profession within the last three weeks, including an entire law firm of three.

Under the state's constitution, the Supreme Court is responsible for disciplining lawyers who violate the legal code of ethics.

Since January, the court has removed 12 lawyers from the practice of law for improperly using client funds. During that period, two other lawyers were disbarred for reasons other than misappropriation.

The court also has scheduled a hearing on Sept. 8 to determine whether former State Sen. John M. Skevin, Bergen County Democrat, should be similarly disbarred for misappropriation of client funds.

Skevin, against whom charges of unethical practices have been pending for almost 3½ years, has been recommended for disbarment by the state's Disciplinary Review Board. The board's disbarment recommendation to the state Supreme Court affirmed a similar finding by the county ethics committee.

The court has permitted Skevin to continue to practice law until it decides his discipline at some point after the September hearing.

David E. Johnson Jr., director of the state's Office of Attorney Ethics (OAE), said that eight of the 14 who have been disbarred this year involved voluntary actions, a procedure that generally avoids the further disgrace of expanded notoriety which accompanies court disbarment proceedings. The OAE is the investigative and prosecutorial arm of the Supreme Court.

The ratio of disbarments for the misappropriation of funds held in lawyer trust accounts is running considerably higher thus far than in previous years, according to statistics provided by Johnson.

The recent annual report of the OAE said that 24 attorneys were disbarred last year, of which 13 were for misappropriation of funds. In 1984, there were 26 disbarments of which 13 again were for misappropriations.

Among the 12 persons already disbarred for misappropriation in 1986 were three lawyers of the Monmouth County firm of Shultz and Fleischer. In a 6 to 1 opinion, the Supreme Court found Edward L. Fleischer, H. Barry Shultz and Jay L. Schwimer to have "knowingly used clients' funds for their own benefit."

The Disciplinary Review Board, which reviews the findings of ethics committees before they are referred to the Supreme Court, "found overwhelming evidence that the attorneys had intentionally misappropriated clients' funds."

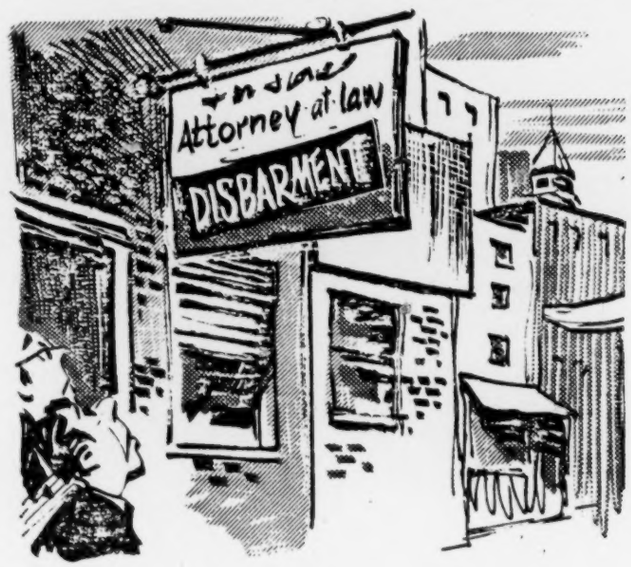
According to the disbarment opinion of the Supreme Court:

"(The three) formed their law firm in 1979 and struggled with a marginal law practice into the summer of 1981, when they terminated the employment of their bookkeeper.

"Left to their own devices, they ceased using their operating account, which was subject to a levy by a judgment creditor, and began to use their trust account as the sole firm bank account."

The opinion added that Fleischer's testimony "makes painfully clear" that the three "knowingly comingled the operating and trust accounts to meet firm expenses, and on several occasions they wrote checks that were returned for insufficient funds."

The opinion said that "overdraft balances in their trust account are attributable to an invasion of specific clients' funds." Citing its 1979 benchmark opinion for matters that involve misappropriation of client funds, called "In re Wilson," the court disbarred the three.



The Wilson opinion established a definition for misappropriation, which according to the ruling means "any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom."

Earlier this year, the court reaffirmed In re Wilson and broadened the standards for determining misappropriation in another disciplinary opinion called "In re Noonan." Under the Noonan opinion, the court further detailed "the misappropriation that will trigger automatic disbarment under In re Wilson."

It stated that in almost all cases disbarment for misappropriation "consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's

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money and knowing that the client has not authorized the taking."

"It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client," the Noonan opinion stated, adding:

"Nor does it matter that the pressures on the lawyer to make the money were great or minimal.

"The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, are irrelevant: It is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment."

Another recent disbarment for misappropriation involved John R. Lennan of Tenafly who, "on numerous occasions" the court's opinion said, "drew checks to himself out of the trust funds of four clients."

The court said that an OAE auditor found "there was a pattern of taking trust funds held as deposits on real estate closings and replacing them before the closing occurred."

Under the Wilson ruling, even temporary use of the client funds and ultimate repayment to the attorney trust account is reason for a lawyer to be disbarred, as was the case in the Lennan matter.

The fifth recent disbarment involved Arnold E. Brown of Englewood, whose trust account was found by the OAE to be "frequently deficient." The court said that "Brown continually invaded the trust funds of one client to pay another."

In fact, its opinion stated, "there is no excusing Brown's constant dipping into this trust account for four and a half years."

According to the Disciplinary Review Board's recommendation to the Supreme Court that Skevin be disbarred, the former state senator "has admitted that he consciously comingled his personal funds with his trust account funds." The finding by the board added:

"It is clear that he used clients' funds. His unauthorized temporary use for his own purpose, regardless of whether he derived any personal gain, is misappropriation."

And in its lengthy decision dealing with the numerous charges against Skevin by clients, the board commented that "the legal profession is unique in that its practitioners are entrusted with millions of dollars of the funds of others without the requirement of bonding or other direct supervision."

"The basis for this trust is the presumption that attorneys, as officers of the court, will discharge their fiduciary obligations both ethically and responsibly," the finding stated.

"The public is entitled to no less."

The Office of Attorney Ethics also has found that attorneys who practice in certain areas of law are more prone to commit unethical acts than others, according to the OAE's annual report.

"Statistics show that practitioners in certain areas are more grievance-prone than those in other areas," the report stated. "An analysis of all grievances filed during calendar year 1985 shows that practices in six areas of the law generate almost three-quarters of all the grievances that are filed," it added, explaining:

"In order of greatest frequency, they are real estate, 16.4 percent; negligence, 15.7 percent; domestic relations, 15.1 percent; estates, 10.2 percent; criminal law, 7.5 percent, and general litigation, 7.1 percent."

The report also said that four of the six most grievance-prone areas of the law "are the same fields which are most frequently cited as responsible for malpractice claims."

The OAE pointed out that the American Bar Association's National Legal Malpractice Data Center recently conducted a study of 18,486 lawyer malpractice claims and found that lawyers face the greatest risk of malpractice claims when practicing in the following legal fields:

"Real estate, 24.9 percent; personal injury, plaintiff, 24 percent; collection and bankruptcy, 12.3 percent; family law, 7.8 percent, and estate and probate, 7.1 percent."

According to the report, "misappropriation continues to be responsible for the greatest amount of public discipline," representing 39 percent of all lawyer disciplinary actions in New Jersey in 1985. Criminal conviction of lawyers was second, representing 22 percent of all sanctions against attorneys that ranged from disbarment to suspension.